

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

ROBERT MILLER,

Plaintiff,

- against -

ASSOCIATED NEWSPAPERS LTD.,
and DOES 1 through 10 inclusive,

Defendants.

Case No. 1:22-cv-6008

COPYRIGHT INFRINGEMENT

COMPLAINT

Plaintiff Robert Miller for his complaint against Defendant Associated Newspapers, Ltd. and DOES 1 through 10 inclusive, alleges as follows:

JURISDICTION AND VENUE

1. This is a civil action seeking damages and injunctive relief for copyright infringement under the Copyright Act of the United States 17 U.S.C. § 101 *et seq.*

2. This Court has subject matter jurisdiction over Plaintiff's claims for copyright infringement pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1338(a).

3. This court has personal jurisdiction over Defendant because Defendant's acts of infringement complained of herein occurred in the state of New York, Defendant's acts of infringement were directed towards the state of New York, Defendant caused injury to Plaintiff within the state of New York, and Defendant has a physical presence in the state of New York.

4. Venue in this judicial district is proper under 28 U.S.C. § 1391(c) and 1400(a) in that this is the judicial district in which substantial part of the acts and omissions giving rise to the claims occurred.

PARTIES

5. Plaintiff Robert Miller (“Miller”) is an individual residing in New York, New York.

6. On information and belief, Defendant Associated Newspapers, Ltd. (“Associated Newspapers”) is an entity formed under the laws of the United Kingdom. Associated Newspapers has a business address of 51 Astor Place, 9th Floor, New York, NY 10003.

7. Plaintiff is unaware of the true names and capacities of the Defendants sued herein as DOES 1 through 10, inclusive, and for that reason, sues such Defendants under such fictitious names. Plaintiff is informed and believes and on that basis alleges that such fictitiously named Defendants are responsible in some manner for the occurrences herein alleged, and that Plaintiff’s damages as herein alleged were proximately caused by the conduct of said Defendants. Plaintiff will seek to amend the complaint when the names and capacities of such fictitiously named Defendants are ascertained. As alleged herein, “Defendant” shall mean all named Defendants and all fictitiously named Defendants.

FACTUAL ALLEGATIONS

8. Miller is a professional photographer with over 30 years’ experience.

9. Miller’s photographs have been published in numerous magazines and newspapers such as *Time*, *Newsweek*, *LIFE*, *US News and World Report*, *Business Week*, *Stern*, *Der Spiegel*, *Paris Match*, *Rolling Stone*, *Vanity Fair*, *Elle*, *People*, *New York Magazine*, *The London Times*, *The South China Morning Post*, *USA Today*, *The New York Times*, *NY Daily News*, *Newsday*, and *VOICE*.

10. Miller’s work on 9/11 is in the permanent collection in The Library of Congress, published in several books was also included in a Bill Moyers *Frontline* documentary about 9/11 that appeared on PBS.

11. In the early 2000s Miller began working as an independent contractor for the *New York Post* (“Post”).

12. Under his arrangement with the Post, Miller charges the Post a negotiated flat rate per shift for a non-exclusive editorial license to the photographs that he takes during that shift, and in exchange he gets to keep the copyrights to the photographs, which he can then license to third parties for considerably higher value.

13. Often, Miller is able to take photographs of interesting or notable events, and since he retains the copyrights to his photographs, his is able to command significant licensing value on the secondary market.

14. In January of 2022, *Saturday Night Live!* stars and New York natives Pete Davidson and Colin Jost purchased the decommissioned Staten Island Ferry.

15. Shortly after news of the purchase broke, Miller went to the dock to capture a photograph of the Ferry.

16. Upon arriving at the dock, and to Miller's surprise, Davidson also happened to be at the dock.

17. Subsequently, Miller was able to take a series of photographs of Davidson in front of the Staten Island Ferry ("Davidson Photographs").

18. At issue in this litigation are three of the Davidson Photograph.

19. Miller registered the Davidson Photographs with the United States Copyright Office under registration VA 2-292-790.

20. True and correct copies of the Davidson Photographs are attached hereto as Exhibit A.

21. Defendant Associated Newspapers, Ltd. is the owner and operator of the website www.dailymail.co.uk ("Website") which is the Internet site for the publication Daily Mail.

22. Associates Newspapers maintains an office for the Website at 51 Astor Place, 9th Floor, New York, NY 10003.

23. Shortly after the Davidson Photographs were first published in the

Post, Miller discovered that the Davidson Photographs were being used in an article on the Website without his permission (“Infringing Article”).

24. Attached hereto as Exhibit B is a true and correct copy of the Infringing Article.

25. Attached hereto as Exhibit C are true and correct screenshots of the Davidson Photographs being used on the Daily Mail Website.

26. Miller did not consent to the use of his Davidson Photographs on the Website.

FIRST CAUSE OF ACTION
COPYRIGHT INFRINGEMENT
17 U.S.C. § 101 *et seq.*

27. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

28. Plaintiff did not consent to, authorize, permit, or allow in any manner the said use of Plaintiff’s unique and original Davidson Photographs.

29. Plaintiff is informed and believes and thereon alleges that said Defendant willfully infringed upon Plaintiff’s copyrighted Davidson Photograph in violation of Title 17 of the U.S. Code, because, *inter alia*, Defendant knew or should have known that it did not have a legitimate license for the Davidson Photograph.

30. As a result of Defendant’s violations of Title 17 of the U.S. Code, Plaintiff is entitled to actual damages and profits pursuant to 17 U.S.C. §504(b), or statutory damages in an amount up to \$150,000 for each infringement pursuant to 17 U.S.C. § 504(c).

31. As a result of the Defendant’s violations of Title 17 of the U.S. Code, the court in its discretion may allow the recovery of full costs as well as reasonable attorney’s fees and costs pursuant to 17 U.S.C § 505 from Defendant.

32. Plaintiff is also entitled to injunctive relief to prevent or restrain infringement of his copyright pursuant to 17 U.S.C. § 502.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendant as follows:

1. For a finding that Defendant infringed Plaintiff's copyright interest in the Davidson Photographs by copying, displaying, and distributing them without a license or consent;
2. For an award of actual damages and disgorgement of all profits attributable to the infringement as provided by 17 U.S.C. § 504 in an amount to be proven or, in the alternative, at Plaintiff's election, an award for statutory damages against Defendant in an amount up to \$150,000 for each infringement pursuant to 17 U.S.C. § 504(c), whichever is larger;
3. For an order pursuant to 17 U.S.C. § 502(a) enjoining Defendant from any infringing use of any of Plaintiff's works;
4. For costs of litigation and reasonable attorney's fees against Defendant pursuant to 17 U.S.C. § 505;
5. For pre judgment interest as permitted by law; and
6. For any other relief the Court deems just and proper.

Dated: July 14, 2022

Respectfully submitted,

/s/ Taryn R. Murray
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